

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NOS. 2005-402-C, 2005-403-C, 2005-404-C, 2005-405-C and 2005-406-C

ORDER NO. 2006-615

NOVEMBER 6, 2006

|        |  |   |                 |
|--------|--|---|-----------------|
| IN RE: | Docket No. 2005-402-C – Time Warner          | ) | ORDER DENYING   |
|        | Cable Information Services (South Carolina), | ) | PETITION FOR    |
|        | LLC,   | ) | RECONSIDERATION |
|        | Complainant/Petitioner,                      | ) |                 |
|        |  | ) |                 |
|        | vs.  | ) |                 |
|        |  | ) |                 |
|        | St. Stephen Telephone Company,               | ) |                 |
|        | Defendant/Respondent.                        | ) |                 |
|        |  | ) |                 |
|        | <hr/> Docket No. 2005-403-C – Time Warner    | ) |                 |
|        | Cable Information Services (South Carolina), | ) |                 |
|        | LLC,   | ) |                 |
|        | Complainant/Petitioner,                      | ) |                 |
|        |  | ) |                 |
|        | vs.  | ) |                 |
|        |  | ) |                 |
|        | Farmers Telephone Cooperative, Inc.,         | ) |                 |
|        | Defendant/Respondent.                        | ) |                 |
|        |  | ) |                 |
|        | <hr/> Docket No. 2005-404-C – Time Warner    | ) |                 |
|        | Cable Information Services (South Carolina), | ) |                 |
|        | LLC,   | ) |                 |
|        | Complainant/Petitioner,                      | ) |                 |
|        |  | ) |                 |
|        | vs.  | ) |                 |
|        |  | ) |                 |
|        | Home Telephone Company, Inc.,                | ) |                 |
|        | Defendant/Respondent.                        | ) |                 |
|        |  | ) |                 |
|        | <hr/>  | ) |                 |

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|--|---|
| Docket No. 2005-405-C – Time Warner          | ) |
| Cable Information Services (South Carolina), | ) |
| LLC,   | ) |
| Complainant/Petitioner,                      | ) |
| vs.  | ) |
| PBT Telecom, Inc.,                           | ) |
| Defendant/Respondent.                        | ) |
| <hr/>  |   |
| Docket No. 2005-406-C – Time Warner          | ) |
| Cable Information Services (South Carolina), | ) |
| LLC,   | ) |
| Complainant/Petitioner,                      | ) |
| vs.  | ) |
| Fort Mill Telephone Company,                 | ) |
| Defendant/Respondent.                        | ) |
| <hr/>  |   |

This matter comes before the Public Service Commission of South Carolina (“the Commission”) on the Petition for Reconsideration or Rehearing of Order No. 2006-515 (“the Petition”) filed by Time Warner Cable Information Services (South Carolina), LLC (“TWCIS” or “the Company”). Because of the reasoning as explained below, the Petition is denied.

TWCIS first asserts that this Commission erred as a matter of law in holding that carriers who hold a rural exemption are relieved of the interconnection obligations of Section 251 (a) and (b) of the Telecommunications Act of 1996 (“the Act”). First, we note that the Defendant Companies in this matter (St. Stephen Telephone Company, Farmers Telephone Cooperative, Inc., Home Telephone Incorporated, PBT Telecom, Incorporated, and Fort Mill Telephone Company) have not asserted that their rural

exemptions exempt them from the obligations of Sections 251 (a) and (b) of the Act. Furthermore, TWCIS ignores the Commission's actual holding.

The language referred to in the Order is as follows: "Rural carriers are exempt from the obligations of subsection (c), but must still negotiate interconnection with other telecommunications carriers upon request under subsections (a) and (b), if the Commission determines that the rural exemption does not apply." The Parties have asked for clarification of this language. Because we believe that this holding is not needed under the circumstances of this case, we hereby withdraw it. As stated, none of the Defendant Companies have asserted the rural exemption. This language is irrelevant in light of the Commission's holding that TWCIS' Motion for Summary Disposition must be denied because there is a genuine issue of material fact regarding whether or not TWCIS is a telecommunications carrier. If TWCIS is not a telecommunications carrier, then it is not entitled to interconnection under either Section 251(a) or 251(c) of the Act, because only other telecommunications carriers are entitled to request interconnection. See 47 U.S.C. Section 251(a) ("Each telecommunications carrier has the duty... to interconnect... with the facilities and equipment of other telecommunications carriers..."); See also Section 251 (c) ("[E]ach incumbent local exchange carrier has...[t]he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network..."). The Act defines "telecommunications carrier" as a "provider of telecommunications services[.]" 47 U.S.C. Section 153(44).

The Voice-over Internet Protocol ("VoIP") services that TWCIS is seeking to provide under a proposed interconnection arrangement have not been classified as a "telecommunications service" entitling it to the benefits of Section 251 of the Act. Accordingly, this Commission did not misconstrue the Act.

TWCIS next asserts that this Commission was clearly erroneous and abused its discretion in stating that a disputed issue of fact existed as to TWCIS' status as a telecommunications carrier. TWCIS argues that the Commission previously found in prior proceedings that TWCIS is indeed a telecommunications carrier with respect to VoIP services. This is not the case. While the Commission has referenced the ability of TWCIS to enter into negotiations as a telecommunications carrier [Order No. 2005-412 at 5 (August 1, 2005)], the Commission later clarified on rehearing that TWCIS may be entitled to seek interconnection if the service it sought to provide is a "telecommunications service" under the Act and if TWCIS satisfied the definition of a "telecommunications carrier" under the Act [Order No. 2005-484 at 5 (Sept. 26, 2005)].

The Defendant Companies have maintained that TWCIS does not appear to be a telecommunications carrier in the Companies' service areas within the state with respect to the provisioning of VoIP services. See e.g. Answers, dated Jan. 30, 2006, Complaints of Time Warner Cable Information Services (South Carolina), LLC v. St. Stephen Telephone Company, et al., Docket Nos. 2005-402-C through 2005-406-C; Letter of John Staurulakis, Inc. to TWCIS' counsel, dated Dec. 16, 2005. Despite TWCIS' assertions to the contrary, the fact that other carriers have not questioned or disputed the nature of the services to be provided by TWCIS, or that other carriers have agreed to enter into

interconnection agreements that treat TWCIS' services like telecommunications services in the absence of a definitive ruling to the contrary, does not mean the issue has been predetermined as to the Companies' respective service areas or that the Companies have waived their right to question the nature of TWCIS' services.

Likewise, TWCIS' argument that it is entitled to interconnection because it holds itself out as a "telecommunications carrier," is actually another disputed fact, is not persuasive, and is irrelevant to the question of whether its service offerings are "telecommunications services." TWCIS has clearly reserved its right to contend that the VoIP services at issue are not "telecommunications services" and that TWCIS is not a "telecommunications carrier" with respect to the provisioning of those services. See e.g. TR at 30. A significant dispute exists as to the proper classification of VoIP services, and the Commission properly held these matters in abeyance pending resolution of the open federal dockets established to address these very issues.

Finally, TWCIS argues that the Commission mischaracterized the record in several respects, thereby substantially prejudicing its rights. TWCIS alleges that the Commission erroneously characterized the stipulation between TWCIS and the South Carolina Telephone Coalition ("SCTC") in Docket No. 2003-362-C in several respects. First, TWCIS claims that the Commission erroneously stated that the Stipulation precluded TWCIS from marketing or provisioning its services in the stipulated areas after July 1, 2004. In fact, the Stipulation provided that TWCIS would not provide its services in certain areas (i.e. those areas where the rural telephone company no longer held a rural exemption) prior to July 1, 2004. It must be noted, however, that while TWCIS claims

that this Commission misstated the record, it is not the record of this proceeding to which TWCIS is referring, but the record in an earlier proceeding. The Commission included the information for background purposes only, and any alleged misstatement of fact is not relevant to the Commission's holding in this matter in any event. As stated, the stipulated term regarding the timing of TWCIS' provision of service did not relate to the Defendant Companies at issue in these Dockets, but only to those South Carolina Telephone Coalition members who no longer hold rural exemptions. See Order No. 2004-213 in Docket No. 2003-362-C at 3. As to the Defendant Companies at issue here, TWCIS agreed in Docket No. 2003-362-C not to provide service in those areas served by the Defendant Companies at all under the certificate granted in that proceeding. See Order No. 2004-213 at 2-3 (citing a provision in the stipulation that provides: "TWCIS amends its application to seek to serve customers only in areas where the rural telephone company does not currently have a rural exemption under 47 U.S.C. Section 251(f)(1).") TWCIS can hardly be prejudiced by an alleged misstatement of a fact that does not relate to the Defendant Companies or to this proceeding, but only to the service areas of other telephone companies.

TWCIS next asserts that the Commission improperly described in its Order the geographic areas in which TWCIS wished to provide further service, and, in addition, failed to note that TWCIS informed the Commission that it also intended to provide regulated, non-VoIP services. These arguments are without merit. As with the foregoing argument, these issues pertain to other proceedings and are simply not relevant here. Even if the Commission's geographic description of the service area sought in an earlier

proceeding was factually incorrect (i.e. if it erroneously included other rural companies' service areas in addition to the areas served by the Defendant Companies at issue here), it did not influence or otherwise affect this Commission's reasoning or the proper determination that these matters should be held in abeyance pending resolution of the issues before the Federal Communications Commission ("FCC"). Finally, the Commission's alleged failure to note certain testimony in an earlier proceeding is simply not relevant in the present case. TWCIS' contention in that regard was fully weighed and discussed in this Commission's Orders in that proceeding. See Order Nos. 2005-412 and 2005-484 in Docket No. 2004-280-C.

In summary, TWCIS does not state any valid grounds for us to grant the requested relief. We also note that Order No. 2006-515 was interlocutory in nature. That Order merely holds the proceedings in abeyance for a period of 120 days or until the FCC rules on TWCIS' petitions, whichever occurs first. We further determined in Order No. 2006-515 that if the FCC has not ruled within the 120 day period, this Commission would review its decision and determine whether to schedule this matter for hearing. Order No. 2006-515 at 10. Clearly, that Order simply delays any action on the TWCIS complaints for the present time, and TWCIS may appear at a later date to argue its positions.

Accordingly, the TWCIS Petition is denied. This Order shall remain in full force and effect until further Order of the Commission.

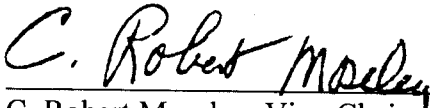
BY ORDER OF THE COMMISSION:



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G. O'Neal Hamilton, Chairman

ATTEST:



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C. Robert Moseley, Vice-Chairman

(SEAL)